

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Electronic Delivery of MVPD Communications)	MB Docket No. 17-317
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

EX PARTE COMMENTS OF NRJ TV LLC

NRJ TV LLC (“NRJ”) and its affiliates, as licensees of fourteen independent full power and Class A television stations in the majority of the top ten designated market areas (“DMAs”),¹ submits its ex parte comments in the above referenced proceedings. As an independent operator, NRJ elects must-carry status for the majority of its full power stations. NRJ is particularly concerned that a change to the default for station carriage on cable systems from must-carry to retransmission consent, without updating the procedures for electing such status, could have devastating consequences for independent stations, with the potential to reduce the number of viable independent broadcast voices – a result that would not be in the public interest.

NRJ’s experience with the current, antiquated process of sending must-carry elections via certified mail to hundreds of cable operators over multiple must-carry cycles has demonstrated a high failure rate in the delivery of these notices, due both to a lack of a central, reliable database of notice addresses, and a significant failure rate in the USPS’s certified mail service, even when addresses are correct. If the election default status for cable systems were changed to retransmission consent, these frequent failures in delivery of must-carry notices, whether due to

¹ NRJ is the parent of licensees of stations in the San Francisco, Dallas, Honolulu, Los Angeles, Houston, Boston, Philadelphia, New York, and San Diego DMAs.

errors in the FCC’s Cable Operations and Licensing System (“COALS”) database, errors by the broadcaster, or delivery errors by the USPS, would suddenly be elevated from minor nuisances to existential threats for independent broadcasters. Given the lack of any cure mechanism for a faulty election, and the fact that each election cycle lasts for three years, a single failed election could result in the loss of a significant portion of a stations’ revenue for a full three years – a period that many independent broadcasters could not endure. For these reasons, NRJ opposes any change to the default must-carry election status for cable carriage.

Additionally, NRJ supports efforts to modernize the must-carry election process, in order to reduce the costs and administrative burden required to make these elections, while improving the reliability of the process, ultimately enabling broadcasters to efficiently and reliably make their elections. NRJ does not advocate for a specific proposal but supports those proposals which will result in a more streamlined, reliable process, while minimizing the risk of loss of carriage. For example, NAB, Nexstar, ION and Joint Broadcasters propose to allow stations to satisfy the election notice requirement by placing elections in online public files.² Others advocate for email or other electronic delivery methods.³ NRJ believes any of these proposals would be far superior to the current system.

Importance of Must-Carry Status For Independent Broadcasters

NRJ’s stations are programmed with a mix of non-top-four affiliation and other programming contracts. The vast majority, if not all, of these contracts require the stations to be carried on the cable systems in such stations’ DMAs. If they are not, NRJ would likely lose the

² See National Association of Broadcasters Comments at 2-11 (filed February 15, 2018) (“NAB Reply Comments”); Nexstar Comments at 6 (filed February 15, 2018) (“Nexstar Comments”); Joint Broadcasters Comments at 8-9 (filed February 15, 2018) (“Joint Broadcasters Comments”); ION Media Networks Reply Comments at 6 (filed March 5, 2018) in Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative, *Notice of Proposed Rule Making*, 32 FCC Rcd 10755 (2017) MB Dockets Nos. 17-105, 17-317 (“NPRM”).

³ See Nexstar Comments at 5-6; Joint Broadcasters Comments at 8-9.

affiliation/programming contract or receive a dramatic reduction in revenue as the size of audience that NRJ delivers would drop significantly. Furthermore, NRJ estimates that a loss of must-carry status on the major cable and satellite systems in a particular DMA would reduce a station's viewers by more than half, which would obviously lead to a significant decrease in advertising revenue.

Must-carry status is essential to independent operators like NRJ. For these reasons, NRJ opposes any changes to the default status for cable carriage. NRJ recognizes that the Commission is not proposing the modification of the default presumption for stations electing carriage on cable systems from must-carry to retransmission consent.⁴ However, the proposal has been raised by several broadcasters in this proceeding,⁵ and NRJ wants to make the Commission aware of the severe consequences that could result, especially for independent broadcasters, if the Commission makes such a change in this or a future proceeding. As the Joint Broadcasters point out (even though they advocate for a change in the default status), in 2010, close to 40 percent of broadcasters elected or defaulted to must-carry status.⁶ This is a significant number of stations that could suffer severe consequences if the default status of cable carriage is changed from must carry to retransmission consent.

NRJ's Must Carry Election Experience

To elect must-carry or retransmission consent status with cable operators, a station must send each cable system via certified mail its election statement by the date prescribed in the

⁴ *NPRM* at 10768, note 88 (“Although some of these commenters proposed even broader changes to the must carry/retransmission consent system, in this docket we are focused exclusively on notice issues”).

⁵ See Nexstar Comments at 8; Joint Broadcasters Comments at 2-8; NAB Comments at 2-11.

⁶ Joint Broadcasters Comments at 4.

Commission's rules.⁷ Failure to do so currently results in a station defaulting to must-carry status. In the most recent election window (October 2017), for its fourteen stations, NRJ sent 178 letters to cable systems via certified mail, return-receipt requested.⁸

NRJ obtained addresses for these cable systems primarily from the COALS database. Where it could, NRJ confirmed addresses through web searches. Still, out of the 178 letters NRJ sent, 24 were returned to NRJ as undeliverable (a 13% failure rate.) Another 22 of the green "return receipt" cards were never returned to NRJ so, although the USPS online system shows the letters were delivered, NRJ lacks the positive confirmation of delivery that only a signature on a return receipt can provide, creating the risk that the recipient could dispute the USPS's electronic delivery confirmation. Thus, out of 178 letters sent, 46 (or 26%) failed to be delivered and confirmed as intended.

Because the default election status is must-carry, this failure rate is not exceptionally concerning. However, if the default status for cable systems were changed to retransmission consent, this failure rate would be damaging to the revenue and operating profitability of NRJ and other similarly situated independent broadcasters.

We also note that the broadcasters who rely most heavily on must-carry tend to be the ones with the least resources to ensure they have properly executed their election letters, and the least resources to defend themselves if their must-carry rights are challenged. In order to preserve independent voices in broadcasting, processes should be designed to help these

⁷ 47 C.F.R. 76.64(h) (2018).

⁸ While return-receipt is not a requirement for election status letters to cable systems, NRJ does so as good practice.

broadcasters be successful, rather than creating draconian consequences for minor failures.⁹

Maintaining the current default must-carry status achieves an appropriate balance, allowing broadcasters to choose retransmission consent, while also protecting those that desire must-carry status and would be at most risk if they lost it.

While the primary cause of NRJ's must-carry election letters failing to be delivered was the erroneous and outdated address information in the FCC's COALS database, a second issue, that is equally important, is the difficulty a broadcaster faces trying to perform the very first step of compiling a list of cable operators in the station's local market. A broadcaster must identify every operator in each county within its DMA (and in some cases, counties are split between DMA's so a broadcaster must look at individual communities, in addition to the county.) The user interface for the COALS database offers no method to easily download data for further manipulation, such as to cross-reference it with DMA information. Thus, even the simple step of compiling a list of all cable operators in a DMA is a manual, time-consuming process, with a high risk that a broadcaster will completely miss one or more cable operators that it should be sending an election letter to. The consequences of such an omission are not severe with the current default status of must-carry, but any change to the default status would turn such omissions into very expensive mistakes. This provides further support for NRJ's position that the default status should remain as must-carry, and also that the process should be streamlined and modernized to help broadcasters efficiently and reliably make their elections.

⁹ In a recent case, a station's election was received but rejected by a cable operator (and confirmed by the Commission) because the station used priority mail instead of certified mail to send the election. *See* Minority Television Project, Inc., Licensee of Noncommercial Television Station KMTP, San Francisco, California, *Memorandum Opinion and Order*, DA 18-63 (2018). The draconian result of this case is the exact reason independent operators, like NRJ, are extremely concerned about a change in the default election status without a change in the election methodology.

Conclusion

In conclusion, NRJ encourages the Commission to keep independent stations in mind as it reviews the record and makes decisions in this proceeding. These stations provide viewers with important, alternative programming, increasing the diversity of voices available to the public. Changing the default election from the current must-carry status would greatly increase the risk that these stations would suffer severe financial consequences from failed must-carry elections, even if the failures were outside the broadcasters' control. As detailed above, such failures are currently commonplace and unavoidable given the lack of a reliable source of notification address for cable companies, or even a robust method for ensuring that every cable company in a station's market has been identified. NRJ therefore believes the public interest is best served by maintaining the status quo default must-carry status, rather than making a change that would risk harming independent broadcasters.

To the extent that the Commission considers changing any aspect of the must-carry process, we strongly support efforts, as advocated by many other commenters in this proceeding, to use electronic means to simplify and modernize the election process in order to reduce the costs and administrative burden for broadcasters to make their elections efficiently and reliably.

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

April 3, 2018

NRJ TV's Attorney

Respectfully submitted,

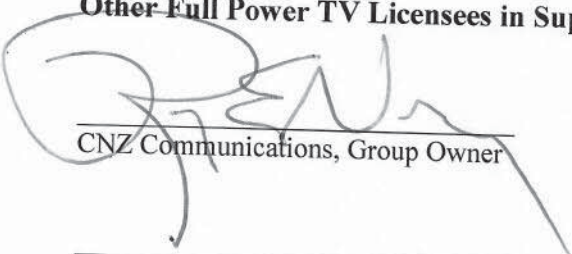
NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:



CNZ Communications, Group Owner

Coasta de Oro Media, KJLA in Los Angeles

Daystar TV Network, Group Owner

Ellis Communications, KDOC in Los Angeles

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018


NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner

KJLA, LLC, KJLA in Los Angeles

Daystar TV Network, Group Owner


Ellis Communications, KDOC in Los Angeles

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner

 *Karen Williams* **EVP, G.M.**
KJLA, LLC, KJLA in Los Angeles

Daystar TV Network, Group Owner

Ellis Communications, KDOC in Los Angeles

HC2 Station Group



KVMD TV LLC, KVMD in Los Angeles



Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner



Daystar TV Network, Group Owner

Coasta de Oro Media, KJLA in Los Angeles

Ellis Communications, KDOC in Los Angeles

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner

Coasta de Oro Media, KJLA in Los Angeles

Daystar TV Network, Group Owner

Ellis Communications, KDOC in Los Angeles

Lo B. Levi

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner

KJLA, LLC, KJLA in Los Angeles

Daystar TV Network, Group Owner

Ellis Communications, KDOC in Los Angeles

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

Rancho Palos Verdes Broadcasters, KXLA LA



Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

NRJ TV LLC

NRJ TV's Attorney

WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: /s/
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner

Coasta de Oro Media, KJLA in Los Angeles

Daystar TV Network, Group Owner

Ellis Communications, KDOC in Los Angeles

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner



WRNN-TV, WRNN New York & WMCN Philadelphia

Respectfully submitted,

NRJ TV LLC

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1875 I Street NW, Suite 500
Washington, DC 20006
Direct: 202-747-1694

March __, 2018

NRJ TV's Attorney

Other Full Power TV Licensees in Support of this filing:

CNZ Communications, Group Owner

Coasta de Oro Media, KJLA in Los Angeles

Daystar TV Network, Group Owner

Ellis Communications, KDOC in Los Angeles

HC2 Station Group

KVMD TV LLC, KVMD in Los Angeles

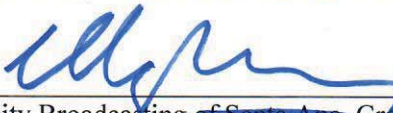
Rancho Palos Verdes Broadcasters, KXLA LA

Texas Television, KUSI in San Diego

Venture Technologies, Group Owner

WRNN-TV, WRNN New York & WMCN Philadelphia

Trinity Broadcasting of Santa Ana, Group Owner

 Colly May, Atty. for
Network